

**BOARD OF APPEALS
For
MONTGOMERY COUNTY**

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Case No. CBA-2851-A

PETITION OF MANORCARE INC.

OPINION OF THE BOARD

(Hearings Held May 7, 2003, and July 23, 2003)
(Effective Date of Opinion: January 16, 2004)

Case No. CBA-2841-A is a Petition for modification of an existing special exception for a nursing home to approve a new site plan, a new landscaping plan and to delete any requirement for an internal allocation of private and semi-private rooms. The Petition is filed pursuant to Sections 59-G-1.2.1, 59-G-1.21, 59-G-1.25, and 59-G-2.37 of the Zoning Ordinance of Montgomery County, Maryland, Montgomery County Code, 1994, as amended (the "Zoning Ordinance").

Decision of the Board: Special exception modification **GRANTED**,
subject to the conditions enumerated below.

Public hearings were held on May 7 and July 23, 2003, pursuant to Section 59-A-4.11 (a) of the Zoning Ordinance.

Appearing on behalf of the Petitioner were Mark M. Viani, Esq. of Linowes and Blocher LLP, Kayla McDonald, Director of the Facility; Brian Donnelly, a landscape architect and site planner and Scott Harvey, P.E., an acoustical engineer.

Martin Klauber, the People's Counsel of Montgomery County, participated in the hearings in support of the requested modifications as conditioned hereunder.

Theodore Seale participated at the May 7, 2003 and July 23, 2003 hearings. Joseph Galleli and Michael Wong participated at the May 7, 2003 hearing.

EVIDENCE PRESENTED TO THE BOARD

1. The subject property is located at 6530 Democracy Boulevard, in Bethesda, on a 1.84-acre record lot, which is improved with a three-level (one level below grade) nursing home and a 58-space surface parking facility. The site is bounded to the north by Democracy Boulevard, to the east by a medical office building, to the south by single-family detached dwellings, and to the west by Fernwood Road. (Exhibit No. 32 (a) - 2003 Site Plan; Exhibit No. 31 - M-NCPPC Staff Recommendation).

2. The Property is in the R-90 zone, which permits a nursing home by special exception. (Section 59-C-1.3 of the Zoning Ordinance).

3. This special exception was originally granted to the Petitioner's predecessor-in-interest, Fernwood House, in an Opinion, dated August 25, 1970 (the "1970 Opinion"). Since 1970, this special exception has been amended twice; On March 11, 1994 (the "1994 Opinion") and on April 14, 1995 (the "1995 Opinion") (Exhibit No. 20(a) - 1970 Opinion; Exhibit No. 20(b) - 1994 Opinion and Exhibit No. 20(c) - 1995 Opinion).

4. In 1970, the Board of Appeals granted a special exception to Fernwood House for a 100-bed nursing home (the "Facility") and associated surface parking facility as outlined in a site plan presented to the Board (the "1970 Site Plan") (Exhibit No. 20(f) -1970 Site Plan)

5. In 1994, the Board of Appeals approved Fernwood House's request to enclose a porch and make numerous other changes to the Property, as delineated in a revised site plan. (Exhibit No. 13).

6. In 1995, the Board of Appeals approved the transfer of this special exception from Fernwood House to the Petitioner (Exhibit No. 17).

7. On March 8, 2001, the Montgomery County Department of Permitting Services ("DPS") issued a Notice of Violation to the Petitioner, alleging the following violations of the special exception: 1) exceeding the maximum permitted number of employees onsite at any one time (57 employees) (this charge was later withdrawn by DPS); 2) exceeding the 100-bed maximum limitation; 3) violating the requirements for private and semi-private rooms; 4) paving over a portion of the rear yard that was shown on the 1970 Site Plan as covered in grass. (Exhibit No. 20(e))

8. On August 5, 2002, the Petitioner filed an application for a minor special exception modification requesting that the Board: 1) permit the Facility to operate with 110 beds (an increase of 10 beds); 2) clarify that 1994 Site Plan (which reflects the Property's current layout) superceded the 1970 Site Plan; and

3) delete any requirement for a set internal allocation of private and semi-private rooms (the "2002 Administrative Modification") (Exhibits No. 20 and 21).

9. In an Opinion dated October 23, 2002, the Board of Appeals approved the 2002 Administrative Modification and: 1) adopted the 1994 Site Plan; 2) deleted the allocation of private and semi-private rooms; and 3) authorized the Facility to operate with 110 beds. (Exhibit No. 22)

10. Through a letter to the Board, dated November 6, 2002, neighboring property owners, objecting to the 2002 Administrative Modification, registered the following complaints about the Facility: 1) noise from an emergency generator recently installed in the rear yard; 2) insufficient landscaping resulting the Facility's lack of "curb appeal" as seen from Democracy Boulevard and Fernwood Road; 3) trash storage practices (i.e. dumpsters left open, trash exposed to crows and rats) and early morning trash collections; and 4) the possibility that the Petitioner's employees were parking on Winnepeg Road. (Exhibit 28 - Neighbor's Letter)

11. In response to the Neighbor's Letter, the Board of Appeals, through a resolution, dated November 26, 2002: 1) suspended its approval of the 2002 Administrative Modification; 2) directed the Montgomery County Department of Permitting Services to inspect the property and prepare a report to the Board; 3) and set this matter for a public hearing. (Exhibit No. 23)

12. In response to the Neighbor's Letter and after several meetings with the neighboring property owners, the Petitioner amended its petition to modify the special exception by: 1) withdrawing the request to increase the Facility's number of beds; 2) requesting approval of a new site plan (the "2003 Site Plan" - Exhibit 32(a)) and a new landscape plan (the "2003 Landscape Plan" - Exhibit 32(c)) for the Property; and 3) renewing the request to delete the allocation of private and semi-private rooms. (Exhibit No. 32)

13. At the May 7, 2003 public hearing, Ms. McDonald testified that the following steps were taken to address the community's concerns with trash collection and storage: 1) modified its trash collection contract to require its contractor, Waste Management, to collect trash daily, Monday through Saturday, after 10:00 a.m.; 2) replaced its existing dumpsters with two new, rodent proof dumpsters (Photographs of the new dumpsters were introduced as Exhibit 37(b)); 3) installed an attractive, board-on-board screening fence around the new dumpsters; 4) distributed a policy to all employees requiring the new dumpsters to be closed at all times (a copy of this policy was introduced as Exhibit 37(a)); and 5) contracted with a pest control company.

14. Ms. McDonald testified that the dumpsters shown in photographs (Exhibit 37(b)) were new.

15. In a report to the Board, dated April 30, 2003, the M-NCPPC staff concluded that the Petitioner's pest control efforts were satisfactory and supported the Petitioner's changes to trash collection time, requesting that the Board condition approval of this special exception modification on Petitioner's continued compliance with the solid waste collection time limitations outlined in Section 48-21(b) of the County Code. (Exhibit No. 31)

16. Mr. Klauber also requested that the Board condition approval of this special exception modification on Petitioner's continued compliance with the solid waste collection time requirements outlined in Section 48-21(b).

17. In the May 7, 2003 session, Mr. Brian Donnelly explained how the changes proposed in the 2003 Site Plan and 2003 Landscape Plan responded to the community's concerns about the Facility's with landscaping and "curb appeal". Referring to the 2003 Site Plan and 2003 Landscape Plans, Mr. Donnelly testified that the Petitioner proposed to significantly improve the Facility's appearance along Fernwood Road by converting a portion of the rear yard adjacent to Fernwood Road from a gravel parking area to landscaped buffer.

18. Mr. Donnelly further testified that the Petitioner proposed to completely replace the existing stockade fence along the rear of the Property with an attractive board-on-board solid wood fence and to relocate a portion of the fence (behind adjoining Lots 10 and 11) to the rear property line. Mr. Donnelly noted that the new fence would significantly enhance the Property's appearance as seen from the adjoining residential properties because, unlike the existing stockade fence, which only provided an attractive front from one side (the side facing the Facility), the new fence will present an attractive appearance from both sides. Relocating the fence to the property line will permit the Petitioner to install additional trees and landscape buffering between the fence and retaining wall near the rear surface parking facility.

19. Through the 2003 Landscape and Lighting Plan, Mr. Donnelly further explained that the Petitioner will significantly upgrade the Facility's landscaping with a particular focus on improving the Facility's appearance from Democracy Boulevard and Fernwood Road.

20. Mr. Donnelly concluded that the changes proposed in the 2003 Site Plan and 2003 Landscape Plan would enhance the Facility's compatibility and harmony with the surrounding properties in terms of landscaping and general appearance. Based on the 2003 Site Plan, Mr. Donnelly concluded that the Facility would continue to satisfy the general and special exceptions for a nursing home in the R-90 zone as well as the development standards for the R-90 zone.

21. Mr. Wong requested that the Petitioner provide additional trees to buffer his view into the rear deck of the Facility.

22. Mr. Donnelly responded to Mr. Wong's request by adding a series of Leland Cypress trees along that portion of the Facility's rear yard near Mr. Wong's property.

23. The M-NCPPC Report concluded that the "landscaping package is found to be sufficient enough to buffer and screen the facility from the surrounding community."

24. Mr. Donnelly testified that because the Facility is a 100-bed nursing home with 54 employees on the largest shift, pursuant to Sections 59-E-3.7 and G-2.37 of the Zoning Ordinance (which require one space for every bed and one space for every two employees on the largest shift) the Petitioner is required to provide 52 on-site parking spaces. Mr. Donnelly explained that this requirement is exceeded because there are 58 on-site parking spaces. Mr. Donnelly further explained that the Petitioner will restripe the surface parking facility to provide 59 on-site parking spaces, including 4 handicapped spaces.

25. Ms. McDonald testified that the Petitioner had entered into a contract (Exhibit 36(a)) with the Bethesda Church of Christ, which is located across Fernwood Drive, to provide a daily minimum of 8 off-site parking space with an additional parking available from special events. Ms. McDonald also testified that she had published a policy, a copy of is posted in the Facility's lobby that prohibits employees and visitors from parking on Winnepeg Drive (Exhibit 36(b)).

26. In the DPS Report, Mr. Garber stated that he had performed a license plate check of vehicles parked on Winnepeg Road and found that none of the vehicles belonged to the Petitioner's employees. (Exhibit 30 – MCDPS Report) Mr. Garber acknowledged that "the [P]roperty has ample parking" and supported the Petitioner's proposal to restripe its parking facility, to lease off-site parking spaces from the Bethesda Church of Christ and its continued implementation of the policy prohibiting parking along Winnepeg Road. (Exhibit No. 30)

27. Ms. McDonald testified that recently the Petitioner was required by a change in the State regulations governing hospitals and nursing homes to upgrade its emergency power supply system with an emergency generator capable powering life support and life safety systems. Ms. McDonald stated the new emergency generator was installed after it had been approved by the State Department of Health and Mental Hygiene and an electrical permit had been issued by Montgomery County.

28. Ms. McDonald explained that the new generator replaced a smaller, less powerful emergency generator that had been located against the Facility's rear wall, near the major mechanical systems it would supply in the event of a

power outage. Ms. McDonald stated because the new generator was too big to fit within the Facility, it had located against the Facility's outer wall, opposite the inside location of the old generator. She further testified that the new generator at this location provided the following benefits: 1) efficient connections through the outer wall to the existing electrical connection and control panels; 2) keeping the emergency power system close the major mechanical systems it supports; 3) convenient access for service vehicles; and 4) optimal location at the lowest point on the Property - where the Facility's rear wall and the two retaining walls in the rear yard reduce the generator's visibility and noise.

29. Ms. McDonald testified that the emergency generator was operated only in the event of power outage and for a State-mandated, thirty-minute, operational test conducted each Friday at 10:00 a.m.

30. Scott Harvey, the Petitioner's acoustical expert, presented testimony and submitted a supporting acoustical study, which had been approved by the Montgomery County Department of Environmental Protection ("DEP"), outlining a comprehensive series of sound mitigation measures steps that Petitioner will take to ensure that the Facility complies with the County's noise control standards, in Chapter 31B of the Montgomery County Code.

31. Mr. Harvey explained that through a combination of operational restrictions, point source sound mitigation measures and secondary sound mitigation measures, the Facility could operate in compliance with the County's sound mitigation measures. Mr. Harvey stated that the Petitioner was committed to implementing the measures proposed in his study and approved by DEP. Mr. Harvey also stated that the Petitioner accepted DEP's request for post-implementation sound monitoring. Mr. Harvey concluded that the implementation of the noise mitigation measures outlined in his testimony and in the Acoustical Study would enhance the Facility's compatibility and harmony with surrounding properties in terms of noise.

32. Mr. Klauber requested that the Board condition its approval of the Petitioner's special exception modification on the formation of Community Liaison Committee that would meet twice each year to address issues arising between the Petitioner and the community. The Petitioner agreed to Mr. Klauber's request.

FINDINGS OF THE BOARD

Based upon the testimony and evidence of record, the Board concludes that the special exception modification complies with the general and specific requirements for a nursing home special exception in the R-90 zone, as set forth in Sections 59-G-1.2 and 2.37 of the Zoning Ordinance. Specifically, the Board finds as follows:

Montgomery County Zoning Ordinance

Sec. 59-G-1.2. Conditions for granting.

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The Board finds that the inherent and non-inherent effects of the proposed modification have been established by the existence of the previously approved special exception. The Board finds that no non-inherent adverse effects will result from the proposed modifications and that the inherent adverse effects associated with nursing home operations will not be exacerbated in any way by the requested modifications and that because the upgraded emergency generator is required by State law, it is an inherent characteristic of a nursing home.

The Board also finds that this use has operated on the Property for more than 30 years without altering the residential character of the area, and that, the modifications requested by the Petitioner are limited in scope and will not adversely affect the residential neighborhood or alter its character. (Exhibits 30-33, 36-38 and 40; Paragraphs 13,16, 17, 19, 20, 23-28 and 32).

As described above, the Board finds that modifications proposed by the Petitioner will serve to better integrate this special exception into the surrounding residential neighborhood.

59-G-1.21. General conditions.

- (a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

The Board of Appeals finds that the requested special exception modification is permissible in the R-90 zone (Exhibits 20(a)-(c), 31; Paragraph 2).

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The Board of Appeals finds that the requested modification complies with the standards and requirements for nursing homes in Section 59-G-2.37 (Exhibits 32(a)-(d), 40; Paragraph 20, 23 and 24).

(3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with an recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or Board's technical staff in its report on a special exception concludes that the granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The Board of Appeals finds that the requested modification is consistent with the Approved and Adopted 1992 North Bethesda/Garrett Park Master Plan. The requested modification proposes changes that will enhance the Facility's compatibility with the community. (Exhibits 30-32(a)-(d), and 40; Paragraphs 2, 16, 17, 23, 24 and 32).

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The Board of Appeals finds that the requested modification will be in harmony with the general neighborhood. The proposed modifications include no new structures or changes in intensity or operations. The proposed modification includes changes addressing the restoration of landscaping, landscaped area, noise attenuation measures and parking that will ensure continued harmony with

surrounding properties. (Exhibits 30-33, 36-38 and 40; Paragraphs 13,16, 17, 19, 20, 23-28 and 32).

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board of Appeals finds that the requested modification is limited in scope and will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone. The Board finds that proposed modification includes changes to Facility's landscaping, parking and noise mitigation will enhance its compatibility with surrounding properties. (Exhibits 30-33, 36-38 and 40; Paragraphs 13,16, 17, 19, 20, 23-28 and 32).

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board of Appeals finds that the requested modification is limited in scope and will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone. The Board finds that the Petitioner will be required to fully implement the noise mitigation measures outlined in Mr. Harvey's testimony and acoustical study and will be subject to post-implementation monitoring by DEP. (Exhibit 32(d), Paragraph 32).

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential area of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The Board of Appeals finds that the requested modification is consistent with the recommendations of the Master Plan and will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential area of the area (Exhibits 31 and 40).

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board of Appeals finds that the requested modification is limited in scope and will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone (Exhibit 31).

(9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Public water and sewer serve the subject site. There will be no significant impacts upon public roads. (Exhibit 31).

(i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

The Property is a recorded lot and does not require approval of a preliminary plan of subdivision (Exhibit 32(a)).

(ii) With regard to findings relating to public roads, the Board, the Hearing Examiner or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

The Board finds that the requested modification will not have a detrimental effect on the safety of vehicular or pedestrian traffic (Exhibit 31, 36(a) and (b), Paragraphs 25-28).

Sec. 59-G-2.37. Nursing home or domiciliary care home.

(a) A nursing home of any size, or a domiciliary care home for more than 16 residents (for 16 residents or less see "Group home") may be allowed if the board can find as prerequisites that:

(1) the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents;

The Board finds that the proposed modification will enhance the existing special exception use's compatibility with surrounding properties in terms of trash storage and collection, general appearance, noise and parking, and, that it will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents. (Exhibits 30-33, 36-38 and 40; Paragraphs 13,16, 17, 19, 20, 23-28 and 32).

(2) the use will be housed in buildings architecturally compatible with other buildings in the surrounding neighborhood; and

The Board finds that the proposed modification does not include any new buildings. (Exhibits 32(a)).

(3) the use will be adequately protected from noise, air pollution, and other potential dangers to the residents.

The Board finds that the evidence before the Board, particularly Mr. Harvey's testimony and acoustical report, establishes that the nursing home residents will be adequately protected from noise, air pollution, and other potential dangers. (Exhibits 30, 31, 32(d); Paragraph 32).

(4) The Board of Appeals may approve separate living quarters, including a dwelling unit, for a resident staff member within a nursing home or domiciliary care home.

Not applicable.

(b) The following requirements must apply to a nursing home housing 5 patients or less:

(1) The minimum lot area must be as stated for the applicable zone but in no case less than 7,500 square feet.

(2) The minimum street frontage must be 50 feet.

(3) Minimum setbacks, minimum green area, maximum coverage and maximum height

are those prescribed in these regulations for the zone.

Not Applicable

(c) The following requirements apply to all new nursing homes, additions to existing nursing homes where the total number of residents is 6 or more, and to all domiciliary care homes for more than 16 residents.

(1) The minimum lot areas in the rural zone must be 5 acres or 2,000 square feet per bed, whichever is greater.

(2) In all other zones, the minimum lot area must be 2 acres or the following, whichever is greater:

a. In the RE-2, RE-2C, Re-1 and R-200 zones, 1,200 square feet for each bed.

b. In the R-150, R-90, R-60 and R-40 zones, 800 square feet for each bed.

Not Applicable

c. In the R-T, R-30 and R-20 zones, 600 square feet for each bed.

d. In the R-10, R-H, C-O, C-T and C-2 zones, 300 square feet for each bed.

e. In the town sector and planned neighborhood zones, 800 square feet per bed.

(3) Minimum side yards are those specified in the zone, but in no case less than 20 feet.

The Board finds that the Facility exceeds this requirement with side yard setbacks of approximately 90 feet. (Exhibit 32(a), Paragraph 20)

(4) Maximum coverage, minimum lot frontage, minimum green area, minimum front

and rear yards and maximum height, are as specified in the applicable zone.

The Board finds that the Facility satisfies the following development limitations for the R-90 zone.

	<u>Allowed</u>	<u>Required</u>
Building setbacks		
Front	30 feet	approximately 35 feet
Side*	20 feet	approximately 90 feet
Rear	25 feet	approximately 45 feet

* Setback per Section 59-G2.37(c)(3) of the County Code.

	<u>Allowed</u>	<u>Required (cont'd)</u>
Building coverage	30% or 24,139 s.f.	29% or 23, 740 s.f.
Internal green space	5% or 1,467 s.f.	5.1% or 1,512 s.f.

(Exhibit No. 32(a), Paragraph 20)

(d) Off-street parking must be provided in the amount of one space for every 4 beds and one space for 2 employees on the largest work shift, except the board may specify additional off-street parking spaces where the method of operation or type of care to be provided indicates an increase will be needed.

The Board finds that the Facility will exceed this requirement with 59 on-site parking spaces, 7 spaces more than required. (Exhibit 31, 32(a); Paragraphs 25-28).

(e) An application must be accompanied by a site plan, drawn to scale, showing the location of the building or buildings, parking areas, landscaping, screening, access roads, height of buildings, topography, and the location of sewers, water lines, and other utility lines. The site plan must also show property lines, streets, and existing buildings within 100 feet of the property, and indicate the proposed routes of ingress and egress for automobiles and service vehicles. A vicinity map showing major thoroughfares and current zone boundaries within one mile of the proposed home, must be included.

The Board finds that the Petitioner has satisfied this requirement through the submission of the Site Plan (Exhibit 32(a)).

(f) An application for a special exception for this use must include an expansion plan showing the location and form of any expansions expected to be made in the future on the same site.

(g) Any nursing home, or domiciliary care home for more than 16 residents lawfully established prior to November 22, 1977, is not a nonconforming use, and may be extended, enlarged or modified by special exception subject to the provisions set forth in this section.

(h) Any application for nursing home and/or care home which is pending at the Board of Appeals as of February 24, 1997 at the request of the applicant, may be processed under the applicable provisions of the Zoning Ordinance in effect at the time the application was filed.

Therefore, based upon the foregoing, the Board **grants** the Petition for Modification of the Existing Special Exception for a Nursing Home, including approval of 2003 Site Plan and 2003 Landscape Plan and deletion of any requirements for an internal allocation of private or semi-private rooms, subject to the following conditions:

1. The Petitioner is bound by its testimony and exhibits of record, including but not limited to Exhibits 38, Site Plan, 44, Revised Landscape Plan and 45, Revised Turning Radius Studies; the testimony of its witnesses and representations of its attorney, to the extent that such evidence and representations are identified in this Opinion.
2. Trash collection shall take place Monday through Friday, after 10:00 a.m.
3. The requirement for a set internal allocation of private and semi-private rooms is deleted.
4. DEP may enter upon the Property to conduct sound compliance tests.
5. A Community Liaison Committee, which consists of the representatives of the Petitioner, and the community and the Office of the People's Counsel Montgomery County's shall meet twice a

year to discuss and address issues of mutual concern between the parties.

6. All terms and conditions of the original special exception together with any modifications granted by the Board of Appeals, remain in effect.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Angelo M. Caputo, and Donna L. Barron, Vice Chairman in agreement, and Donald H. Spence, Jr., Chairman necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision in the above-entitled case.

Donna L. Barron
Vice Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 16th day of January, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the Zoning Ordinance). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four (24) months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.